

B

BEFORE THE
BOARD OF PSYCHOLOGY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	Case No. W111
)	
STEPHEN WOODY BROWN, Ph.D.)	OAH No. L-1997080034
20331 Bancroft Circle)	
Huntington Beach, CA 92646)	
)	
Psychologist's License No. PSY 3412)	
)	
Respondent.)	
<hr/>		

DECISION ON REMAND II

The Superior Court of the State of California, pursuant to its Judgment Granting Petition for Peremptory Writ of Administrative Mandate of September 17, 1999, commanded this Board to vacate and set aside its Decision after Nonadoption of April 29, 1999, to make and enter another and different Decision consistent with the Court's opinion, and, finally, to reconsider the issue of penalty in view of the entire record including the changes in basis for disciplinary liability mandated by the Court.

On November 24, 1999, the Board, on its own motion, invited the parties to present written argument, if desired, not later than December 17, 1999, and set the matter on the Board's calendar for oral argument on January 7, 2000.

On January 7, 2000, at Los Angeles, California the parties, through their respective counsel, appeared before a quorum of the members of the Board, consisting of Judith Janaro Fabian, Ph.D., President; Emil Rodolfa, Ph.D.; Martin Greenberg, Ph.D.; Marilyn Palarea; Mary McMillan; and Mary Ellen Early. Paul M. Hogan, Administrative Law Judge, presided. (Member Pamela Harmell, Ph.D. recused herself and took no part in either the hearing, or in the Board's deliberations in this case.)

Complainant and respondent were represented by Ms. Heidi Weisbaum, Deputy Attorney General, and by Mr. Russell Iungerich, Attorney at Law, respectively.

After hearing oral argument, the Board took the matter under submission and reconsidered the case upon the original record, and upon the respondent's oral argument, complainant's written and oral argument, and upon the Court's said Judgment and Statement of Decision. The Board issued its Decision After Remand on February 18, 2000.

On September 22, 2000, the Sacramento Superior Court issued a Peremptory Writ of Administrative Mandate commanding the Board of Psychology to amend conditions 8 and 2 of its February 18, 2000, Decision After Remand, specifically stating the amendments to be made. This Decision After Remand II is in compliance with the Peremptory Writ. A copy of the Peremptory Writ is attached as Exhibit "A".

Finding of Fact

1

Thomas S. O'Connor made the Accusation in his official capacity as Executive Officer of the Board of Psychology.

2

On June 1, 1970, the Board issued Psychologist License No. PSY 3412 to respondent Steven Woody Brown, Ph.D. The license is renewed through August 31, 1999. There has been no previous license discipline.

3

A. From 1981 to 1995, respondent was an Associate Professor and Professor of Psychology at Pepperdine University, Orange County Center.

B. Respondent was the instructor in some academic courses at Pepperdine University which were attended by Kim G., who graduated from Pepperdine with her Master's degree in Psychology in April, 1990.

C. In about September or October, 1990, respondent and Kim G. began a three-year sexual relationship.

D. Kim G. now alleges that she was respondent's patient in psychotherapy from April to September, 1990, and that she paid respondent \$25.00 in cash for each treatment session, but never received any receipts or other evidence of payment. Respondent adamantly denies that Kim G. was ever his patient, for payment or otherwise. Very scant and unconvincing evidence was offered to corroborate the existence of a psychotherapist-patient relationship between the two, as opposed to merely a relationship as lovers. In 1993, Kim G. prevailed upon respondent to sign a blank form entitled "Verification of Individual Psychotherapy," ostensibly to help her establish the therapy hours required for her doctoral studies in California School of Professional Psychology (CSPP), and Kim G. herself filled in on the form that there had been 22 hours of personal psychotherapy from April, 1990, to September, 1990. That form was never submitted to CSPP, and Kim G.'s intent regarding use of the form is not clear. The Administrative Law Judge found that it probably was never intended to be, and that its apparent purpose was only to serve as manufactured evidence to support her claim against respondent. In April, 1994, Kim G. had a lawyer send respondent a notice of intent to sue; she abandoned that threatened

lawsuit when respondent offered to tutor her in her failing doctoral studies. In September, 1994, respondent paid Kim G. \$2500.00 to hire someone else for tutoring and to leave respondent and his wife alone. In January, 1995, Kim G. again had a lawyer send respondent a notice of intent to sue; she abandoned that threatened lawsuit upon being informed that the action was obviously time-barred and could result in liability on her part for malicious prosecution. Subsequently, in mid-1996, Kim G. filed complaints with the Board of Psychology and Pepperdine University.

E. It was not established by clear and convincing evidence that Kim G. was ever respondent's patient, client, or customer, as alleged in paragraph 4, 5, 6, and 7 of the Accusation.

F. During the time of respondent's sexual relationship with Kim G., Kim G. was no longer a student of respondent.

4

A. In about spring, 1992, when respondent was an instructor and professor at Pepperdine University, his student Norma D. went to respondent's office after class to ask about an upcoming mid-term examination. During the conversation, Norma D. told of her back pain from previous lumbar spinal surgery. Respondent told Norma D. that he was interested in, and had worked with sufferers of, back pain and asked if she wished him to work on her. After touching her back under her jacket, he asked whether he could touch her under her shirt. He then asked her to unbutton her trousers so he could reach further down her leg. Although she was apprehensive about respondent's conduct, Norma D. was a registered nurse, and believed that nothing improper would happen since respondent was her professor and a psychologist. With her consent, respondent massaged her bare back and touched her bare buttocks. He also ran his hand inside her trouser leg and down the inside of her bare left leg, where she said the pain went. Respondent put his chin against her bare lower back. She became very uncomfortable and as she rose to leave, she noticed that respondent had an erection. She then left respondent's office.

B. It was not established by any standard of proof that Norma D. was ever respondent's patient, client, or customer, as alleged in paragraphs 10, 11, and 12 of the Accusation.

C. It is undisputed that a student/professor relationship existed between Norma D. and respondent at the time of Norma D.'s visit to respondent's office as described in paragraph A, above.

5

A. Veronica A. Thomas, Ph.D., a licensed psychologist in California, was called as complainant's expert in this matter. Dr. Thomas testified that the Ethical Principles of Psychologists, as amended June 2, 1989, and adopted by the American Psychological

Association generally reflect the accepted standards of care for psychologists in California.

Dr. Thomas made reference to several of the specific principles:

"As teachers, psychologists recognize their primary obligation to help others acquire knowledge and skill. They maintain high standards of scholarship by presenting psychologist information objectively, fully, and accurately." (Principle 1. Responsibility. Number (1)(e).)

"As practitioners, psychologists know they bear a heavy social responsibility because their recommendations and professional actions may alter the lives of others. They are alert to personal, social, organizational, financial, or political situations and pressures that might lead to misuse of their influence." (Principle 1. Responsibility. Number (1)(f).)

Psychologists are continually cognizant of their own needs and of their potentially influential position, vis-à-vis persons such as clients, students, and subordinates. They avoid exploiting the trust and dependency of such persons. Psychologists make very effort to avoid dual relationships that could impair their professional judgment or increase the risk of exploitation." (Principle 6. Welfare of the Consumer. Number (a).)

"Psychologists do not exploit their professional relationships with clients, supervisees, students, employees, or research participants sexually or otherwise. Psychologists do not condone or engage in sexual harassment. Sexual harassment which is defined as deliberate or repeated comments, gestures, or physical contacts of a sexual nature that are unwanted by the recipient." (Principle 7. Professional Relationships. Number (d).)

After referencing the above-noted ethical principles for psychologists, and testifying that they reflect the accepted standards of practice of California psychologists, Dr. Thomas concluded that respondent has violated such standards and engaged in gross negligence in the practice of psychology.

B. Respondent had a professor/student relationship with Norma D. Given the totality of the circumstances, it is clear that respondent used his superior position to take advantage of the power differential that existed between respondent and Norma D. Norma D. was lulled into a false sense of security, knowing that respondent was her professor and a psychologist, and believing that nothing inappropriate would occur when respondent offered a back massage to relieve her pain. Respondent violated that trust when he engaged in the activities described in paragraph (4) (A) of the Findings of Fact.

Determination of Issues

A. Based on paragraphs 3 (E) and 4(B) of the Findings of Fact, it was not established by clear and convincing proof to a reasonable certainty that respondent violated Business and Professions Code Sections 726, 729 or 2960(o).

B. Based on paragraph 4(C) and paragraphs 5(A) through 5(B) of the Findings of Fact, it was not established by clear and convincing evidence to a reasonable certainty that respondent violated Business and Professions Code Section 2960(j).

C. Based on paragraph 4(A) and (C) and paragraphs 5(A) through 5 (B) of the Findings of Fact, it was established by clear and convincing proof to a reasonable certainty that respondent violated the general unprofessional conduct provisions of Business and Professions Code Section 2960.

Shea M.D. v. Board of Medical Examiners (1978) 81 Cal.App.3d 564, 146 Cal.Rptr. 653, holds that "In order to be subject to discipline for unprofessional conduct, Dr. Shea must have demonstrated an unfitness to practice medicine by conduct which breaches the rules or ethical code of his profession, or conduct which is unbecoming to a member in good standing of that profession." (81 Cal.App.3d 578, 146 Cal.Rptr. 653, 662; Emphasis added.) In the present case, respondent has engaged in unprofessional conduct falling within the holding in Shea.

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Psychologist License No. PSY 3412 issued to Stephen Woody Brown, Ph.D. is hereby revoked. The revocation is stayed, and respondent is placed on probation for a period of five (5) years under the following terms and conditions:

1. Ethics Course.

Within 90 days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval a course in laws and ethics as they relate to the practice of psychology. Said course must be successfully completed at an accredited educational institution or through a provider approved by the Board's accreditation agency for continuing education credit. Said course must be taken and completed within one year from the effective date of this Decision. The cost associated with the law and ethics course shall be paid by respondent.

2. Probation Costs.

Respondent shall pay only the actual costs of probation monitoring each and every year of probation. Such costs shall be payable to the Board of Psychology at the end of each fiscal year. Failure to pay such costs shall be considered a violation of probation.

3. Obey All Laws.

Respondent shall obey all federal, state, and local laws and all regulations governing the practice of psychology in California including the ethical guidelines of the American Psychological Association. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board or its designee in writing within seventy-two (72) hours of occurrence.

4. Quarterly Reports.

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board or its designee, stating whether there has been compliance with all the conditions of probation.

5. Probation Compliance.

Respondent shall comply with the Board's probation program and shall, upon reasonable notice, report to the assigned District Office of the Medical Board of California or other designated probation monitor. Respondent shall contact the assigned probation officer regarding any questions specific to the probation order. Respondent shall not have any unsolicited or unapproved contact with 1) complainants associated with the case; 2) Board members or members of its staff; or 3) persons serving the Board as expert evaluators.

6. Change of Employment.

Respondent shall notify the Board in writing, through the assigned probation officer, of any and all changes of employment, location, and address within 30 days of such change.

7. Tolling for Out-of-State Practice, Residence, or In-State Non-Practice.

In the event respondent should leave California to reside or to practice outside the State or for any reason should respondent stop practicing psychology in California, respondent shall notify the Board or its designee in writing within ten days of the dates of departure and return or the dates of non-practice within California. Non-practice is defined as any period of time exceeding thirty days in which respondent is not engaging in any activities defined in Sections 2902 and 2903 of the Business and Professions Code. Periods of temporary or permanent residency or practice outside California or of non-practice within California will not apply to the reduction of this probationary period.

8. Employment and Supervision of Trainees.

During the course of this probation, respondent shall not employ or directly supervise or apply to employ or directly supervise psychological interns, or trainees, within the meaning of Business and Professions Code section 2911, 2913, 2914 or Title

16 CCR section 1387 or 1387.3. Respondent shall terminate any such supervisorial relationship in existence on the effective date of this probation.

9. Violation of Probation.


If respondent violates probation in any respect, the Board may, after giving respondent notice and the opportunity to be heard, revoke probation and carry out the disciplinary order that was stayed. If any Accusation or Petition to Revoke Probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final. No Petition for Modification or Termination of Probation shall be considered while there is an Accusation or Petition to Revoke Probation pending against respondent.

10. Completion of Probation.

Upon successful completion of probation, respondent's license shall be fully restored.

Dated: November 8, 2000.

Decision Effective: November 8, 2000



MARTIN GREENBERG, PH.D.
President
Board of Psychology

1 **RUSSELL JUNGERICH**
2 **A Professional Law Corporation**
3 **Russell Iungerich, State Bar No. 43440**
4 **3580 Wilshire Boulevard, Suite 1920**
5 **Los Angeles, California 90010**
6 **Telephone: (213) 382-8600**

7
8 **Attorneys for Petitioner**
9 **STEPHEN W. BROWN, Ph.D.**

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SACRAMENTO**

12 **STEPHEN W. BROWN, Ph.D.,**

Case No. 99CS00793

13 **Petitioner,**

14 **v.**

15 **BOARD OF PSYCHOLOGY,**

PEREMPTORY WRIT OF
ADMINISTRATIVE MANDATE
(Code of Civil Procedure § 1094.5)

16 **Respondent.**

17 **THE PEOPLE OF THE STATE OF CALIFORNIA, TO THE BOARD OF**
18 **PSYCHOLOGY, STATE OF CALIFORNIA, RESPONDENT:**

19 **GOOD CAUSE APPEARING** from the verified petition for writ of
20 **administrative mandate** in this proceeding and from the hearing held pursuant to
21 **petitioner's motion** for the issuance of a peremptory writ on the supplemental petition,
22 **and judgment** having been entered in this action ordering a peremptory writ of
23 **administrative mandate** be issued from this Court, this matter is remanded to
24 **respondent, and**

25 **YOU ARE HEREBY COMMANDED** immediately on receipt of this writ
26 **(1) to amend condition 8** of its decision of February 18, 2000, effective March 19,
27 **2000, in the proceeding entitled** In the Matter of the Accusation Against Stephen
28 Woody Brown, Ph.D., No. W111, OAH No. L-1997080034, to read as follows:

1
PEREMPTORY WRIT OF ADMINISTRATIVE MANDATE

EXHIBIT "A"

1 "During the course of this probation, respondent shall not employ or
2 directly supervise or apply to employ or directly supervise psychological
3 interns, or trainees, within the meaning of Business and Professions Code
4 section 2911, 2913, 2914 or Title 16 CCR section 1387 or 1387.3.
5 Respondent shall terminate any such supervisorial relationship in
6 existence on the effective date of this probation." and

7 (2) to amend Condition 2 to require petitioner BROWN to pay only actual costs of
8 probation monitoring.

9 No other amendments are required except these two which have been
10 proposed by the BOARD through counsel.

11 YOU ARE FURTHER COMMANDED to make and file a return to this
12 writ within a reasonable time not to exceed sixty (60) days from the date of service of
13 this writ upon you, which return shall set forth what you have done to comply.

14 Dated: September 20, 2000.

16 [Seal] SACRAMENTO SUPERIOR COURT
17 MICHAEL M. RODDY
18 By: M. M. FRANCO
19 Deputy Clerk

21 Approved as to form:
22 BILL LOCKYER
23 Attorney General
24 By *Beth Faber Jacobs*
25 Beth Faber Jacobs
26 Deputy Attorney General
27
28

DECLARATION OF SERVICE BY CERTIFIED MAIL

In the Matter of the Accusation
against:

Brown, Stephen Woody, Ph.D.

No. : W-111

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause; my business address is 1422 Howe Avenue, Sacramento, California 95825. I served a true copy of the attached:

DECISION ON REMAND II

by mail on each of the following, by placing same in an envelope (or envelopes) addressed (respectively) as follows:

NAME AND ADDRESS

CERT NO.

Stephen Woody Brown, Ph.D.
20331 Bancroft Circle
Huntington Beach, CA 92646

7099 3400 0002 4471 6156

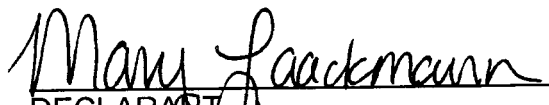
Beth Faber Jacobs
Office of the Attorney General
110 West A Street, Ste. 1100
San Diego, CA 92186-5266

Russell Iungerich, Attorney at Law
A Professional Law Corporation
3580 Wilshire Blvd., Ste. 1920
Los Angeles, CA 90010-2520

Each said envelope was then on, November 8, 2000, sealed and deposited in the United States mail at Sacramento, California, the county in which I am employed, as certified mail, with the postage thereon fully prepaid, and return receipt requested.

Executed on, November 8, 2000, at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


DECLARANT
Mary Laackmann
Enforcement Analyst

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

DATE & TIME: March 20, 2000
JUDGE : Ronald B. Robie
RECORDER : G. Elias

DEPT. NO: 41
CLERK : M. Franco
BAILIFF : L. O'Connor

99CS00793 STEPHEN W. BROWN, PH.D. VS. BOARD OF PSYCHOLOGY

MOTION FILED BY: PETITIONER

ATTORNEYS PRESENT:

IUNGERICH, RUSSELL
FABOR JACOBS, BETH

ATTORNEY FOR PETITIONER
ATTORNEY FOR RESPONDENT

NATURE OF PROCEEDING: EX PARTE APPLIC FOR STAY

TENTATIVE RULING

Appearance Required.

COURT RULING

This matter argued by counsel and submitted.

This matter taken under submission.

The hearing on the Supplemental Petition for Writ of Mandate was set for June 23, 2000 at 1:30 p.m.

RULING ON SUBMITTED MATTER

The court, having taken the matter under submission, now makes its ruling as follows:

Petitioner's application for a stay of respondent's decision on remand is GRANTED.

There is confusion concerning the effect of condition 8 of the conditions of probation imposed in the decision on remand. The California Code of Regulations, title 16, section 1387.3, seems designed to prevent students being trained by licensed psychologists who are on probation. They can not obtain credit for such training. Respondent's counsel claims there is nothing in the record regarding petitioner's employment position. It has been clear from the beginning that petitioner is currently acting in a managerial capacity for a state-operated medical facility, and if condition 8 would, in effect, require him to cease that employment, then the term may be impermissibly broad and may not be rationally related to the conduct for which discipline was imposed. The purpose of a condition relating to

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTODATE & TIME: March 20, 2000
JUDGE : Ronald B. Robie
RECORDER : G. EliasDEPT. NO: 41
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BAILIFF : L. O'Connor

99CS00793 STEPHEN W. BROWN, PH.D. VS. BOARD OF PSYCHOLOGY

MOTION FILED BY: PETITIONER

supervising psychological assistants, interns or trainees would seem to be to prevent someone who has abused such a supervisory position from being in a situation where the conduct could reoccur.

The court is satisfied that the public interest will not suffer by the stay of the decision on remand and that respondent is unlikely to prevail ultimately on the merits:

The stay shall be conditioned on the terms set forth in the proposed order submitted by petitioner with the application for stay.

DATED: March 21, 2000

JUDGE OF THE SUPERIOR COURT

BOOK: DEPT 41

SACRAMENTO SUPERIOR and MUNICIPAL COURTS

PAGE:

DATE: March 20, 2000

BY: _____ DEPUTY

CASE NO: 99CS00793

CASE TITLE: STEPHEN W. BROWN, PH.D. VS. BOARD OF PSYCHOLOGY

DISTRIB:

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(3))

I, the Clerk of the Sacramento Superior and Municipal Court District, County of Sacramento, State of California, certify that I am not a party to this cause, and on the date shown below I served the foregoing MINUTE ORDER by depositing true copies thereof, enclosed in separate, sealed envelopes with the postage fully prepaid, in the United States Mail at Sacramento, California, each of which envelopes was addressed respectively to the persons and addresses shown below:

RUSSEL IUNGERICH
A PROFESSIONAL LAW CORPORATION
3580 WILSHIRE BLVD STE 1920
LOS ANGELES CA 90010

BETH FABER JACOBS
DEPUTY ATTORNEY GENERAL
PO BOX 85266
SAN DIEGO CA 92186-5266

I, the undersigned deputy clerk, declare under penalty of perjury that the foregoing is true and correct.

Dated: March 21, 2000

Sacramento Superior Court

By: M. FRANCO
Deputy Clerk

1 **RUSSELL IUNGERICH**
2 **A Professional Law Corporation**
3 Russell Iungerich, State Bar No. 43440
4 3580 Wilshire Boulevard, Suite 1920
5 Los Angeles, California 90010
6 Telephone: (213) 382-8600

7
8 Attorneys for Petitioner
9 STEPHEN W. BROWN, Ph.D.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SACRAMENTO**

12 STEPHEN W. BROWN, Ph.D.,

13 Petitioner,

14 v.

15 BOARD OF PSYCHOLOGY,

16 Respondent.

Case No. 99CS00793

[PROPOSED]
STAY OF DECISION AND ORDER
OF BOARD OF PSYCHOLOGY; NOTICE
OF HEARING

DATE: March 20, 2000

TIME: 9:00 a.m.

DEPT: 41

17 Having heard the ex parte application for stay telephonically on March 20,
18 2000, Russell Iungerich and RUSSELL IUNGERICH, A Professional Law Corporation,
19 having appeared for petitioner STEPHEN W. BROWN, Ph.D., and BILL LOCKYER,
20 Attorney General of the State of California, and Deputy Attorney General Beth Faber Jacobs
21 having appeared for respondent BOARD OF PSYCHOLOGY, and

22 Good cause appearing from the ex parte application submitted on behalf of
23 petitioner STEPHEN W. BROWN, and this Court being satisfied that the public interest will
24 not suffer and that the agency is unlikely to prevail ultimately on the merits,

25 IT IS ORDERED pursuant to Code of Civil Procedure section 1094.5(h) that
26 the decision and order of respondent BOARD OF PSYCHOLOGY dated February 18, 2000,
27 effective March 19, 2000, revoking Psychologist License No. PSY 3412, staying revocation,
28 and placing petitioner BROWN on probation for a period of five (5) years on various terms
and conditions is hereby stayed until further decision of this Court on the petition for writ

1 of administrative mandate. The Court imposes as conditions of this stay each of the
2 following conditions of respondent's order of probation:

3 **CONDITION 3 — OBEY ALL LAWS.** Petitioner BROWN shall
4 obey all federal, state, and local laws and all regulations governing the practice
5 of psychology in California including the ethical guidelines of American
6 Psychological Association. A full and detailed account of any and all
7 violations of law shall be reported by petitioner BROWN to the BOARD or
8 its designee in writing within seventy-two (72) hours of occurrence.

9 **CONDITION 4 — QUARTERLY REPORTS.** Petitioner BROWN
10 shall submit quarterly declarations under penalty of perjury on forms provided
11 by the BOARD or its designee, stating whether there has been compliance
12 with the conditions of probation.

13 **CONDITION 5 — PROBATION COMPLIANCE.** Respondent
14 shall comply with the Board's probation program and shall, upon reasonable
15 notice, report to the assigned District Office of the Medical Board of
16 California or other designated probation monitor. Respondent shall contact
17 the assigned probation officer regarding any questions specific to the probation
18 order. Respondent shall not have any unsolicited or unapproved contact with
19 1) complainants associated with the case; 2) Board members or members of
20 its staff; or 3) persons serving the Board as expert evaluators.

21 **CONDITION 6 — CHANGE OF EMPLOYMENT.** Petitioner
22 BROWN shall notify the BOARD in writing, through the assigned probation
23 officer, of any and all changes of employment, location, and address within 30
24 days of such change.

25 **CONDITION 7 — TOLLING FOR OUT-OF-STATE PRACTICE,**
26 **RESIDENCE, OR IN-STATE NON-PRACTICE.** In the event petitioner
27 BROWN should leave California to reside or to practice outside the State or
28 for any reason should petition BROWN stop practicing psychology in

1 California, petitioner BROWN shall notify the BOARD in writing within ten
2 days of the dates of departure and return or the dates of non-practice within
3 California. Non-practice is defined as any period of time exceeding thirty
4 days in which petitioner BROWN is not engaging in any activities defined in
5 Sections 2902 and 2903 of the Business and Professions Code. Periods of
6 temporary or permanent residency or practice outside California or of non-
7 practice within California will not apply to the reduction of this probationary
8 period.

9 As to **CONDITION 9 (VIOLATION OF PROBATION)**, if any of the
10 applicable conditions of this stay are violated, the stay shall terminate upon notice to the
11 Court.

12 The hearing date for the petition for writ of mandate is set for _____
13 2000 at _____,m in Department 41 of this Court.

14 Dated: March ___, 2000.

15
16
17 RONALD B. ROBIE
18 Judge of the Superior Court
19
20
21
22
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26
27
28

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss.

I am over the age of 18 years, employed in the County of Los Angeles, and not a party to the within action; my business address is 3580 Wilshire Boulevard, Suite 1920, Los Angeles, California 90010. I am employed by a member of the bar of this court.

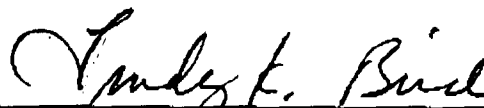
On March 15, 2000, I served the

[PROPOSED]
STAY OF DECISION AND ORDER OF
BOARD OF PSYCHOLOGY; NOTICE OF HEARING

in said action, by placing a true copy thereof enclosed in a sealed envelope, addressed as follows, and deposited the same in the United States Mail at Los Angeles, California.

Beth Faber Jacobs, Esq.
Deputy Attorney General
110 West "A" Street, Suite 1100
P.O. Box 85266
San Diego, CA 92186-5266

I declare under penalty of perjury that the foregoing is true and correct.
Executed this 15th day of March, 2000, at Los Angeles, California.


Trudy K. Bird

PROOF OF SERVICE

B

BEFORE THE
BOARD OF PSYCHOLOGY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

STEPHEN WOODY BROWN, Ph.D.
20331 Bancroft Circle
Huntington Beach, CA 92646

Psychologist's License No. PSY 3412,

Respondent.

Case No. W111

OAH No. L-1997080034

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On November 24, 1999, the Board, on its own motion, invited the parties to present written argument, if desired, not later than December 17, 1999, and set the matter on the Board's calendar for oral argument on January 7, 2000.

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Complainant and respondent were represented by Ms. Heidi Weisbaum, Deputy Attorney General, and by Mr. Russell Iungerich, Attorney at Law, respectively.

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A. From 1981 to 1995, respondent was an Associate Professor and Professor of Psychology at Pepperdine University, Orange County Center.

B. Respondent was the instructor in some academic courses at Pepperdine University which were attended by Kim G., who graduated from Pepperdine with her Master's degree in Psychology in April, 1990.

C. In about September or October, 1990, respondent and Kim G. began a three-year sexual relationship.

D. Kim G. now alleges that she was respondent's patient in psychotherapy from April to September, 1990, and that she paid respondent \$25.00 in cash for each treatment session, but never received any receipts or other evidence of payment. Respondent adamantly denies that Kim G. was ever his patient, for payment or otherwise. Very scant and unconvincing evidence was offered to corroborate the existence of a psychotherapist-patient relationship between the two, as opposed to merely a relationship as lovers. In 1993, Kim G. prevailed upon respondent to sign a blank form entitled "Verification of Individual Psychotherapy," ostensibly to help her establish the therapy hours required for her doctoral studies in California School of Professional Psychology (CSPP), and Kim G. herself filled in on the form that there had been 22 hours of personal psychotherapy from April, 1990, to September, 1990. That form was never submitted to CSPP, and Kim G's intent regarding use of the form is not clear. The Administrative Law Judge found that it probably was never intended to be, and that its apparent purpose was only to serve as manufactured evidence to support her claim against respondent. In April, 1994, Kim G. had a lawyer send respondent a notice of intent to sue; she abandoned that threatened lawsuit when respondent offered to

tutor her in her failing doctoral studies. In September, 1994, respondent paid Kim G. \$2,500.00 to hire someone else for tutoring and to leave respondent and his wife alone. In January, 1995, Kim G. again had a lawyer send respondent a notice of intent to sue; she abandoned that threatened lawsuit upon being informed that the action was obviously time-barred and could result in liability on her part for malicious prosecution. Subsequently, in mid-1996, Kim G. filed complaints with the Board of Psychology and Pepperdine University.

E. It was not established by clear and convincing evidence that Kim G. was ever respondent's patient, client, or customer, as alleged in paragraph 4, 5, 6, and 7 of the Accusation.

F. During the time of respondent's sexual relationship with Kim G., Kim G. was no longer a student of respondent.

4

A. In about spring, 1992, when respondent was an instructor and professor at Pepperdine University, his student Norma D. went to respondent's office after class to ask about an upcoming mid-term examination. During the conversation, Norma D. told of her back pain from previous lumbar spinal surgery. Respondent told Norma D. that he was interested in, and had worked with sufferers of, back pain and asked if she wished him to work on her. After touching her back under her jacket, he asked whether he could touch her under her shirt. He then asked her to unbutton her trousers so he could reach further down her leg. Although she was apprehensive about respondent's conduct, Norma D. was a registered nurse, and believed that nothing improper would happen since respondent was her professor and a psychologist. With her consent, respondent massaged her bare back and touched her bare buttocks. He also ran his hand inside her trouser leg and down the inside of her bare left leg, where she said the pain went. Respondent put his chin against her bare lower back. She became very uncomfortable and as she rose to leave, she noticed that respondent had an erection. She then left respondent's office.

B. It was not established by any standard of proof that Norma D. was ever respondent's patient, client, or customer, as alleged in paragraphs 10, 11, and 12 of the Accusation.

C. It is undisputed that a student/professor relationship existed between Norma D. and respondent at the time of Norma D's visit to respondent's office as described in paragraph A, above.

5

A. Veronica A. Thomas, Ph.D., a licensed psychologist in California, was called as complainant's expert in this matter. Dr. Thomas testified that the Ethical Principles of

Psychologists, as amended June 2, 1989, and adopted by the American Psychological Association generally reflect the accepted standards of care for psychologists in California.

Dr. Thomas made reference to several of the specific principles:

"As teachers, psychologists recognize their primary obligation to help others acquire knowledge and skill. They maintain high standards of scholarship by presenting psychologist information objectively, fully, and accurately." (Principle 1. Responsibility. Number (1)(e).)

"As practitioners, psychologists know they bear a heavy social responsibility because their recommendations and professional actions may alter the lives of others. They are alert to personal, social, organizational, financial, or political situations and pressures that might lead to misuse of their influence." (Principle 1. Responsibility. Number (1)(f).)

"Psychologists are continually cognizant of their own needs and of their potentially influential position, vis-a-vis persons such as clients, student, and subordinates. They avoid exploiting the trust and dependency of such persons. Psychologists make every effort to avoid dual relationships that could impair their professional judgement or increase the risk of exploitation." (Principle 6. Welfare of the Consumer. Number (a).)

"Psychologists do not exploit their professional relationships with clients, supervisees, students, employees, or research participants sexually or otherwise. Psychologists do not condone or engage in sexual harassment. Sexual harassment which is defined as deliberate or repeated comments, gestures, or physical contacts of a sexual nature that are unwanted by the recipient." (Principle 7. Professional Relationships. Number (d).)

After referencing the above-noted ethical principles for psychologists, and testifying that they reflect the accepted standards of practice of California psychologists, Dr. Thomas concluded that respondent has ^{violated} such standards and engaged in gross negligence in the practice of psychology.

B. Respondent had a professor/student relationship with Norma D. Given the totality of the circumstances, it is clear that respondent used his superior position to take advantage of the power differential that existed between respondent and Norma D. Norma D. was lulled into a false sense of security, knowing that respondent was her professor and a psychologist, and believing that nothing inappropriate would occur when respondent offered a back massage to relieve her pain. Respondent violated that trust when he engaged in the activities described in paragraph 4 (A) of the Findings of Fact.

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///

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Determination of Issues

6

A. Based on paragraphs 3 (E) and 4 (B) of the Findings of Fact, it was not established by clear and convincing proof to a reasonable certainty that respondent violated Business and Professions Code Sections 726, 729 or 2960(o).

B. Based on paragraph 4 (C) and paragraphs 5 (A) through 5 (B) of the Findings of Fact, it was not established by clear and convincing evidence to a reasonable certainty that respondent violated Business and Professions Code Section 2960(j).

C. Based on paragraph 4 (A) and (C) and paragraphs 5 (A) through 5 (B) of the Findings of Facts, it was established by clear and convincing proof to a reasonable certainty that respondent violated the general unprofessional conduct provisions of Business and Professions Code Section 2960.

Shea M.D. v. Board of Medical Examiners (1978) 81 Cal.App.3d 564, 146 Cal.Rptr. 653, holds that "In order to be subject to discipline for unprofessional conduct, Dr. Shea must have demonstrated an unfitness to practice medicine by conduct which breaches the rules or ethical code of his profession, or conduct which is unbecoming to a member in good standing of that profession." (81 Cal.App.3d 578, 146 Cal.Rptr. 653, 662: Emphasis added.) In the present case, respondent has engaged in unprofessional conduct falling within the holding in Shea.

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Psychologist License No. PSY 3412 issued to Stephen Woody Brown, Ph.D. is hereby revoked. The revocation is stayed, and respondent is placed on probation for a period of five (5) years under the following terms and conditions:

1. Ethics Course.

Within 90 days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval a course in laws and ethics as they relate to the practice of psychology. Said course must be successfully completed at an accredited educational institution or through a provider approved by the Board's accreditation agency for continuing education credit. Said course must be taken and completed within one year from the effective date of this Decision. The cost associated with the law and ethics course shall be paid by respondent.

///

2. Probation Costs.

Respondent shall pay the costs associated with probation monitoring each and every year of probation. Such costs shall be payable to the Board of Psychology at the end of each fiscal year. Failure to pay such costs shall be considered a violation of probation.

3. Obey All Laws.

Respondent shall obey all federal, state, and local laws and all regulations governing the practice of psychology in California including the ethical guidelines of the American Psychological Association. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board or its designee in writing within seventy-two (72) hours of occurrence.

4. Quarterly Reports.

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board or its designee, stating whether there has been compliance with all the conditions of probation.

5. Probation Compliance.

Respondent shall comply with the Board's probation program and shall, upon reasonable notice, report to the assigned District Office of the Medical Board of California or other designated probation monitor. Respondent shall contact the assigned probation officer regarding any questions specific to the probation order. Respondent shall not have any unsolicited or unapproved contact with 1) complainants associated with the case; 2) Board members or members of its staff; or 3) persons serving the Board as expert evaluators.

6. Change of Employment.

Respondent shall notify the Board in writing, through the assigned probation officer, of any and all changes of employment, location, and address within 30 days of such change.

7. Tolling for Out-of-State Practice, Residence, or In-State Non-Practice.

In the event respondent should leave California to reside or to practice outside the State or for any reason should respondent stop practicing psychology in California, respondent shall notify the Board or its designee in writing within ten days of the dates of departure and return or the dates of non-practice within California. Non-practice is defined as any period of time exceeding thirty days in which respondent is not engaging in any activities defined in Sections 2902 and 2903 of the Business and Professions Code. Periods of temporary or permanent residency or practice outside California or of non-practice within California will not apply to the reduction of this probationary period.

8. Employment and Supervision of Trainees.

If respondent is licensed as a psychologist, he shall not employ or supervise or apply to employ or supervise psychological assistants, interns or trainees during the course of this probation. Respondent shall terminate any such supervisorial relationship in existence on the effective date of this probation.

9. Violation of Probation.

If respondent violates probation in any respect, the Board may, after giving respondent notice and the opportunity to be heard, revoke probation and carry out the disciplinary order that was stayed. If any Accusation or Petition to Revoke Probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final. No Petition for Modification or Termination of Probation shall be considered while there is an Accusation or Petition to Revoke Probation pending against respondent.

10. Completion of Probation.

Upon successful completion of probation, respondent's license shall be fully restored.

Dated: February 18, 2000

Decision Effective: March 19, 2000

J. Fabian, Ph.D.

JUDITH JANARO FABIAN, PH.D.
PRESIDENT
Board of Psychology

PMH:sp

DECLARATION OF SERVICE BY CERTIFIED MAIL

In the Matter of the Accusation
Filed Against:

Stephen Woody Brown, Ph.D.

No. : W111

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause; my business address is 1422 Howe Avenue, Sacramento, California 95825. I served a true copy of the attached:

DECISION AND ORDER

by mail on each of the following, by placing same in an envelope (or envelopes) addressed (respectively) as follows:

NAME AND ADDRESS

CERT NO.

Stephen Woody Brown, Ph.D.
20331 Bancroft Circle
Huntington Beach, CA 92646

Z 436 004 660


Beth Faber Jacobs
Office of the Attorney General
110 West A St., Ste. 1100
San Diego, CA 92186-5266

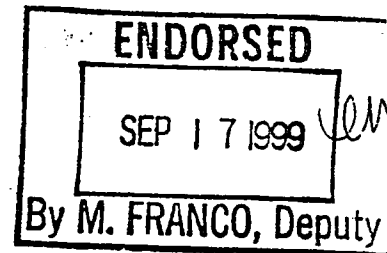
Russell Iungerich, Attorney at Law
A Professional Law Corporation
3580 Wilshire Blvd., Ste. 1920
Los Angeles, CA 90010-2520

Paul M. Hogan, Administrative Law Judge
Office of Administrative Hearings
320 West Fourth St., 6th Floor, Ste. 630
Los Angeles, CA 90013

Each said envelope was then on, February 18, 2000, sealed and deposited in the United States mail at Sacramento, California, the county in which I am employed, as certified mail, with the postage thereon fully prepaid, and return receipt requested.

Executed on, February 18, 2000, at Sacramento, California.
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


DECLARANT
Mary Laackmann
Enforcement Technician



SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

STEPHEN W. BROWN, Ph.D.,

Petitioner,

v.

BOARD OF PSYCHOLOGY,

Respondent.

Case No. 97CS00793

~~Proposed~~

JUDGMENT GRANTING PETITION
FOR PEREMPTORY WRIT OF
ADMINISTRATIVE MANDATE

This matter came regularly before this Court on August 20, 1999, for hearing on petitioner BROWN's motion for a peremptory writ of administrative mandate against respondent BOARD OF PSYCHOLOGY. RUSSELL IUNGERICH and RUSSELL IUNGERICH, A Professional Law Corporation, appeared as attorneys for petitioner STEPHEN W. BROWN, Ph.D. BILL LOCKYER, Attorney General of the State of California, by BETH FABER JACOBS, Deputy Attorney General, appeared as attorneys for respondent BOARD OF PSYCHOLOGY. The administrative record and the administrative transcript were received into evidence, the memoranda of points and authorities of all parties supporting and opposing petitioner's motion for a peremptory writ of administrative mandate against respondent BOARD were received and reviewed by the Court, and this Court heard oral argument of all

1 parties. Exercising its independent judgment and consistent with its Tentative
2 Decision as amended August 20, 1999 (the attached copy of which is incorporated in
3 this judgment by this reference and which constitutes this Court's Statement of
4 Decision),

5 IT IS ORDERED, ADJUDGED and DECREED that:

6 1. The petition for a writ of administrative mandate is granted;

7 2. A peremptory writ of administrative mandate shall issue
8 remanding this matter to respondent BOARD OF PSYCHOLOGY and
9 requiring respondent BOARD OF PSYCHOLOGY (1) to set aside its
10 decision of March 30, 1999, effective April 29, 1999, in the proceeding
11 entitled In the Matter of the Accusation Against Stephen Woody Brown,
12 Ph.D., No. W111, OAH No. L-1997080034, and (2) to reconsider its
13 decision and the penalty imposed in light of this Court's ruling, a copy of
14 which is attached;

15 3. Petitioner BROWN shall recover his costs against the
16 BOARD OF PSYCHOLOGY in the amount of \$ 1,830.05 P.F. 10-26-99

17 Dated: September 17, 1999.

18
19 RONALD B. ROBIE

20 RONALD B. ROBIE
21 Judge of the Superior Court

22 Approved as to form:

23 BILL LOCKYER
24 Attorney General

25 By Beth Faber Jacobs
26 Beth Faber Jacobs
27 Deputy Attorney General

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

DATE & TIME: August 20, 1999
JUDGE : Ronald B. Robie
RECORDER : P. Bakarich

DEPT. NO: 41
CLERK : M. Franco
BAILIFF : J. Blanas

99CS00793 STEPHEN W. BROWN, Ph.D. VS. BOARD OF PSYCHOLOGY

MOTION FILED BY:

ATTORNEYS PRESENT:

FABOR JACOBS, BETH

ATTORNEY FOR RESPONDENT

NATURE OF PROCEEDING: Court Appearance

TENTATIVE RULING

Petitioner challenges respondent's decision which imposed discipline against his license based on its determination that charges of general unprofessional conduct and gross negligence were supported by the evidence.

Petitioner contends that he was not given fair notice that the charge of general unprofessional conduct would be based on a professor-student relationship. He contends that specific statutes preclude sexual misconduct in a professor-student relationship as "general unprofessional conduct" by a psychologist, and that the Ethical Principles of Psychologists adopted by the American Psychological Association may not lawfully be applied to discipline him in this case. He contends that the gross negligence basis of discipline is not supported by the evidence. He contends that the conditions of probation constitute an abuse of discretion. He contends the board considered improper aggravating circumstances. Finally, he contends that the Norma D. case was barred by the statute of limitations.

Petitioner's primary argument is that the APA ethical principles, which include principles regarding relationships with students, may not be applied to discipline him. Petitioner contends that respondent lacks jurisdiction to discipline based on his conduct towards his student Norma D. him because Business and Professions Code section 2903 defines the practice of psychology and does not include teaching at a college or university. Petitioner further contends that respondent may not apply the APA standards pursuant to SHEA v. BOARD OF MEDICAL EXAMINERS (1978) 81 Cal.App.3d 564 because the legislature, by the former language of Business and Professions Code section 2936, had required the respondent to establish standards of ethical conduct by rule or regulation and respondent failed to do so.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

DATE & TIME: August 20, 1999
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99CS00793 STEPHEN W. BROWN, Ph.D. VS. BOARD OF PSYCHOLOGY

MOTION FILED BY:

The court finds these contentions to be without merit. Section 2903 governs the circumstances under which a license is required. An individual can be a professor without having a license. However, if he is both a professor and licensed, at every moment he is a licensee and his conduct reflects upon the profession. As a licensee, he may be disciplined. Anyone who has a valid license can be disciplined for unprofessional conduct during the entire period of the license. Section 2903 only serves as the threshold as to when an individual must have a license. When petitioner simultaneously was a professor and had a valid license, he was subject to discipline as a licensee. The fact that an ethical violation occurred outside the circumstances for which a license is required does not mean that it can not be the basis for discipline. For example, the Legislature has also provided that criminal activity outside the strict confines of the "practice of psychology" as defined in section 2903 may be the basis of professional discipline for "unprofessional conduct". See, e.g., section 2960 (a). In addition respondent's failure to adopt ethical rules or regulations does not preclude respondent from basing discipline on ethical violations.

The court concludes that respondent did not err in determining that the charge of general unprofessional conduct was adequately supported by the evidence of petitioner's conduct towards his student Norma D.

However, the court concludes that the charge of gross negligence was improperly sustained. Section 2960 provides that "[u]professional conduct shall include ... (j) Being grossly negligent in the practice of his or her profession." The court concludes that because Norma D. was not petitioner's patient, client or customer, this charge can not be sustained.

The court also concludes that aggravating circumstances were not properly established. Petitioner's personal sexual life, involving others who were not current students, patients, clients or customers, is not actionable. However, when a current student comes to a professor for advice and assistance, and complains about his sexual conduct towards her, that is actionable.

The court further finds that the penalty imposed by respondent, including the conditions of probation, constitutes a manifest abuse of

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

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99CS00793 STEPHEN W. BROWN, Ph.D. VS. BOARD OF PSYCHOLOGY

MOTION FILED BY:

discretion in light of the totality of the circumstances of this case.

The court finds petitioner's other contentions to be without merit. Petitioner had adequate notice of the charges, the specific statutes do not preclude charging the conduct as general unprofessional conduct, and the statute of limitations in section 2230.5 not only does not appear to apply to proceedings against psychologists, it does not invalidate an accusation that was properly filed before its effective date.

The petition is GRANTED. The matter is remanded to respondent with directions to reconsider its decision and the penalty imposed in light of this court's ruling.

Petitioner shall prepare a judgment and writ in accordance with this ruling.

COURT RULING

This matter argued by counsel and submitted.

This matter taken under submission.

RULING ON SUBMITTED MATTER

The tentative ruling is modified by the addition of the following language to the end of the fourth paragraph, and as so modified, the tentative ruling is affirmed:

As petitioner points out, section 2936 provided at times relevant to this matter that "[t]he board shall by rule or regulation, establish standards of ethical conduct relating to the practice of psychology. ... In establishing these standards, the board may consider codes of ethics of relevant professional organizations" However, its failure to do so does not mean that a licensee can not be disciplined for ethical violations which are not also conduct more specifically described in

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

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99CS00793 STEPHEN W. BROWN, Ph.D. VS. BOARD OF PSYCHOLOGY

MOTION FILED BY:

section 2960(a)-(s). It simply means that there are no specific regulations regarding ethics the violation of which may be charged pursuant to section 2960(k).

DATED: August 20, 1999

RONALD B. ROBIE, JUDGE

BOOK: DEPT 41

PAGE:

DATE: August 20, 1999

CASE NO: 99CS00793

CASE TITLE: STEPHEN W. BROWN, Ph.D. VS. BOARD OF PSYCHOLOGY

DISTRIB:

SACRAMENTO SUPERIOR and MUNICIPAL COURTS

BY: _____ DEPUTY

1 DANIEL E. LUNGREN, Attorney General
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2 RICHARD D. HENDLIN,
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California Department of Justice
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Telephone: (619) 645-2071

6 Attorneys for Complainant
7

8 **BEFORE THE**
9 **BOARD OF PSYCHOLOGY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation
Against:

) Case No. W111
)
)

13 **STEPHEN WOODY BROWN, PH.D.**
20331 Bancroft Circle
14 Huntington Beach, CA 92646

) **ACCUSATION**
)
)

15 Psychologist's License
No. PSY 3412,
16

Respondent.
17

18 Complainant, Thomas S. O'Connor, who as cause for
19 disciplinary action, alleges:

20 **PARTIES**

21 1. Complainant, Thomas S. O'Connor, is the Executive
22 Officer of the Board of Psychology (hereinafter "Board") and
23 brings this accusation solely in his official capacity.

24 2. On or about June 1, 1970, Psychologist's License
25 No. PSY 3412 was issued by the Board to Stephen Woody Brown,
26 Ph.D. (hereinafter "respondent"), and at all times relevant to

27 ///

1 the charges brought herein, this license has been in full force
2 and effect. Unless renewed, it will expire on August 31, 1997.

3 JURISDICTION

4 3. This accusation is brought before the Board of
5 Psychology of the Department of Consumer Affairs (hereinafter
6 "Board"), under the authority of the following sections of the
7 California Business and Professions Code (hereinafter "Code"):

8 A. Section 2960 of the Code, as relevant
9 hereto, provides that the board may suspend or revoke the
10 license of any licensee if the licensee has been guilty of
11 unprofessional conduct. Unprofessional conduct shall
12 include, but not be limited to:

13 ". . . .

14 "(j) Being grossly negligent in the practice of his or
15 her profession.

16 "(k) Violating any of the provisions of this chapter
17 or regulations duly adopted thereunder.

18 ". . . .

19 "(o) Any act of sexual abuse, or sexual relations with
20 a patient, or sexual misconduct which is substantially
21 related to the qualifications, functions or duties of a
22 psychologist or psychological assistant.

23 ". . . ."

24 B. Section 2960.1 of the Code, as relevant
25 hereto, provides that notwithstanding Section 2960, any
26 proposed decision or decision issued under this chapter in
27 accordance with the procedures set forth in Chapter 5

1 (commencing with Section 11500) of Part 1 of Division 23 of
2 Title 2 of the Government Code, that contains any finding
3 of fact that the licensee or registrant engaged in any act
4 of sexual contact, as defined in Section 729, when that
5 act is with a patient, or with a former patient when the
6 relationship was terminated primarily for the purpose of
7 engaging in that act, shall contain an order of revocation.
8 The revocation shall not be stayed by the administrative law
9 judge.

10 C. Section 726 of the Code, as relevant hereto
11 [prior to its amendment in 1993, effective in 1994],
12 provides that the commission of any act of sexual abuse,
13 misconduct, or relations with a patient, client, or customer
14 which is substantially related to the qualifications,
15 functions, or duties of the occupation for which a license
16 was issued constitutes unprofessional conduct and grounds
17 for disciplinary action for any person licensed under this
18 division.

19 D. Section 729 of the Code, as relevant hereto,
20 provides that any psychotherapist who engages in sexual
21 intercourse or sexual contact with a patient or client, or
22 with a former patient or client when the relationship was
23 terminated primarily for the purpose of engaging in those
24 acts, unless the psychotherapist has referred the patient or
25 client to an independent and objective psychotherapist for
26 treatment, is guilty of sexual exploitation by a
27 psychotherapist. Sexual exploitation by a psychotherapist

1 is a public offense, punishable as set forth in this
2 section. "Sexual contact" means sexual intercourse or the
3 touching of an intimate part of a patient for the purpose of
4 sexual arousal, gratification, or abuse, and "intimate
5 part" and "touching" have the same meanings as defined in
6 Section 243.4 of the Penal Code."

7 E. California Business and Professions Code
8 Section 2903 provides, in pertinent part, that the practice
9 of psychology is defined as rendering or offering to render
10 for a fee to individuals, groups, organizations or the
11 public any psychological service involving the application
12 of psychological principles, methods, and procedures for
13 understanding, predicting, and influencing behavior, such as
14 the principles pertaining to learning, perception, methods
15 and procedures of interviewing, counseling, psychotherapy,
16 behavior modification, administering, and interpreting
17 tests of mental abilities, emotions, and motivations. A
18 "fee" means any charge, monetary or otherwise, whether paid
19 directly, prepaid, or a charge assessed by a facility, for
20 services rendered.

21
22
23 1. "Intimate part" is defined by section 243.4,
24 subdivision (f) (1), of the Penal Code as "the sexual organ,
25 anus, groin, or buttocks of any person, and the breast of a
26 female." "Touches" is defined by section 243.4, subdivision (d)
27 (2), of the Penal Code as "physical contact with another person,
whether accomplished directly, through the clothing of the person
committing the offense, or through the clothing of the victim."
"Touches" is further defined by section 243.4, subdivision (e),
of the Penal Code as "physical contact with the skin of another
person whether accomplished directly or through the clothing of
the person committing the offense."

1 F. California Business and Professions Code
2 Section 2903.1 provides that a psychologist licensed under
3 this chapter may use biofeedback instruments which do not
4 pierce or cut the skin to measure physical and mental
5 functioning.

6 G. Section 125.3 of the Code provides, in part,
7 that the Board may request the administrative law judge to
8 direct any licentiate found to have committed a violation or
9 violations of the licensing act, to pay the Board a sum not
10 to exceed the reasonable costs of the investigation and
11 enforcement of the case.

12 H. Section 2964.6 of the Code provides that an
13 administrative disciplinary decision that imposes terms of
14 probation may include, among other things, a requirement
15 that the licensee who is being placed on probation pay the
16 monetary costs associated with monitoring the probation.

17 **FIRST CAUSE FOR DISCIPLINE**

18 4. Respondent Stephen Woody Brown, Ph.D., is subject
19 to disciplinary action on account of the following conduct
20 involving patient K.G.

21 A. From on or about 1983 to the present time,
22 respondent has been an Associate Professor and Faculty
23 Coordinator, Pepperdine University, Orange County Center.
24 At the time of the events alleged herein, respondent taught
25 courses in the field of psychology and had a private
26 practice of psychology in Orange County, California.

27 ///

1 B. Respondent was the instructor in one or more
2 academic classes at Pepperdine University which were
3 attended by K.G. K.G. was graduated from Pepperdine
4 University in the Spring of 1990.

5 C. In or about April of 1990, K.G. requested
6 that respondent recommend a therapist from whom she might
7 receive personal psychotherapy. Respondent replied that he
8 would provide individual psychotherapy to K.G. for a fee of
9 \$25.00 per hour at his office at Pepperdine University.
10 K.G. accepted and individual psychotherapy sessions
11 commenced in or about April 1990.

12 D. During the period from about April 1990
13 through and including September 1990, K.G. had at least 22
14 separate sessions of personal psychotherapy with respondent.

15 E. During the course of therapy, respondent
16 gradually extended the periods of therapy beyond the one-
17 hour sessions originally allotted.

18 F. Respondent indicated to K.G. that emotions
19 are physically manifested as tension in certain areas of the
20 body, specifically the chest. Respondent had her lie on the
21 floor, where he massaged her chest "to assist [her] to get
22 more in touch with the source of [her anxiety and anger]."
23 Soon this became a regular part of their sessions.
24 Respondent also massaged K.G.'s back, again claiming this
25 would assist her to "more easily process [her] feelings."

26 G. The massage described in paragraph F
27 continued for several sessions, with respondent eventually

1 requesting K.G. to unbutton her shirt, then her brassiere,
2 so he could "better access the areas to provide the
3 therapeutic massage." Respondent began to rub the nipples
4 of K.G., asking her, "Do you trust me?" K.G. trusted and
5 felt comfortable with respondent. Becoming sexually
6 attracted to respondent, K.G. communicated to him her desire
7 for a romantic and sexual relationship with him.

8 H. During a therapy session in September of
9 1990, respondent initiated kissing K.G. on the mouth and
10 with his tongue. After that they lay on the floor and
11 kissed and fondled each other.

12 I. The week following the incident alleged in
13 paragraph H, the therapy involved no physical contact.
14 Respondent apologized and told K.G. that he had made a
15 mistake and "that we had a lot to work through."

16 J. In the session following that alleged in
17 paragraph I, respondent and K.G. expressed their mutual
18 attraction. Respondent and K.G. agreed to go to the
19 residence of K.G. for the purpose of having a sexual
20 relationship. They proceeded to her home and engaged in
21 sexual intercourse.

22 K. During the period commencing about September
23 of 1990 and continuing for about three and one-half years,
24 K.G. and respondent maintained a sexual relationship.

25 5. Respondent Stephen Woody Brown, Ph.D., is subject
26 to disciplinary action for unprofessional conduct in violation of
27 Code sections 726 and 2960(o) in that he committed acts of sexual

1 abuse, misconduct, or relations with a patient, client, or
2 customer, which were substantially related to the qualifications,
3 functions, or duties of a psychologist, as more particularly set
4 forth in paragraphs 4A through and including 4K above, which are
5 realleged herein as if fully set forth.

6 6. Respondent Stephen Woody Brown, Ph.D., is further
7 subject to disciplinary action for unprofessional conduct in
8 violation of Code sections 2960 and 729 of the Code in that he
9 engaged in sexual contact with his patient or client and is
10 guilty of sexual exploitation, as more particularly set forth in
11 paragraphs 4A through and including 4K above, which are realleged
12 herein as if fully set forth.

13 7. Respondent Stephen Woody Brown, Ph.D., is further
14 subject to disciplinary action for unprofessional conduct in
15 violation of Code section 2960(j) in that he was grossly
16 negligent in his care and treatment of the patient, as more
17 particularly set forth in paragraphs 4A through and including 4K
18 above, which are realleged herein as if fully set forth.

19 8. Respondent Stephen Woody Brown, Ph.D., is further
20 subject to disciplinary action for unprofessional conduct in
21 violation of Code section 2960 in that he engaged in general
22 unprofessional conduct², as more particularly set forth in
23

24 2. Unprofessional conduct has been defined as conduct
25 which breaches the rules or ethical code of a profession, or
26 conduct which is unbecoming a member in good standing of the
27 profession. See Shea v. Board of Medical Examiners, (1978) 81
Cal.App.3d 654 - general unprofessional conduct as applied to the
practice of medicine.

1 paragraphs 4A through 4K above, which are realleged herein as if
2 fully set forth.

3 SECOND CAUSE FOR DISCIPLINE

4 9. Respondent Stephen Woody Brown, Ph.D., is subject
5 to disciplinary action on account of the following conduct
6 involving patient N.D.

7 A. In about the Spring of 1992, when respondent
8 was an instructor and assistant professor at Pepperdine
9 University, his student N.D. went to the office of
10 respondent with other students after class to inquire about
11 some academic point. N.D. was the last student to have her
12 questions answered and was consequently alone with
13 respondent.

14 B. In the midst of their discussion on the
15 original topic, the subject changed to that of an injury
16 N.D. had sustained to her back. Respondent suggested
17 biofeedback as a treatment modality for back pain and asked
18 N.D. whether she would like to try it right then. N.D.
19 responded, "Sure, if you think it would help."

20 C. Respondent requested N.D. to lie face down on
21 the couch where she had been sitting. Apparently hearing
22 the building's cleaning crew outside in the hall, respondent
23 locked the office door, "so we won't be disturbed." After
24 this, respondent kneeled beside N.D., touched her back
25 through her clothing, and talked in a soothing voice.
26 Then he asked her whether he could touch her under the
27 jacket she was wearing. N.D., who had been feeling

1 apprehensive since the locking of the door, assented to his
2 request, rationalizing her feelings about this by focussing
3 on the fact she was going to be a psychologist, she was an
4 adult, she was a registered nurse, and that this may be some
5 sort of stress test being performed by respondent.

6 D. After touching N.D.'s back under her jacket,
7 respondent asked whether he could touch her under her
8 shirt, then asked whether she could unbutton her denim
9 trousers so he could touch her bare back. Although N.D.
10 felt apprehensive, she rationalized that respondent was a
11 psychologist and her instructor, so nothing would happen.

12 E. While inquiring whether N.D.'s back pain went
13 down her leg, respondent touched her lower back, across her
14 bare buttocks (N.D. had on "thong" underwear), and down
15 inside her left trouser leg. While asking N.D. "How does
16 this feel?" respondent put his chin against her bare lower
17 back. Wanting the behavior of respondent to stop, N.D. told
18 respondent she thought she had better leave his office. As
19 she attempted to leave, respondent remained kneeling and let
20 his hand linger on her body. N.D. pushed against respondent
21 to get up from the couch. Respondent jumped to his feet and
22 adjusted his trousers. Respondent had an erection.

23 F. After the incidents alleged in paragraphs A
24 through and including E, respondent called N.D. at her home,
25 stating he "felt like a school boy" and remarking that he
26 "hadn't felt like this since he was a teenager." Respondent
27 told N.D. that he would walk behind her chair in class so

1 that he could touch her hair. On another occasion,
2 respondent sat near N.D. at a social gathering of students
3 and told her he was unhappy with his wife and planned on
4 leaving her.

5 G. Because of the encounters with respondent
6 alleged in paragraphs A through and including F, N.D. left
7 Pepperdine University to attend another school. Returning
8 to Pepperdine after a trimester away, N.D. was encountered
9 by respondent, who walked her to a class and started again
10 to call her at home. N.D. complained to a school counselor
11 and ultimately, several months later, she met with the
12 associate dean and respondent. At that time, respondent
13 admitted his actions and apologized.

14 10. Respondent Stephen Woody Brown, Ph.D., is further
15 subject to disciplinary action for unprofessional conduct in
16 violation of Code sections 726 and 2960(o) in that he committed
17 acts of sexual abuse, misconduct, or relations with a patient,
18 client, or customer, which were substantially related to the
19 qualifications, functions, or duties of a psychologist as set
20 forth in paragraphs 9A through and including 9G above, which are
21 realleged herein as if fully set forth.

22 11. Respondent Stephen Woody Brown, Ph.D., is further
23 subject to disciplinary action for unprofessional conduct in
24 violation of Code sections 2960 and 729 of the Code in that he
25 engaged in sexual contact with his patient or client and is
26 guilty of sexual exploitation as set forth in paragraphs 9A

27 ///

1 through and including 9G above, which are realleged herein as
2 if fully set forth.

3 12. Respondent Stephen Woody Brown, Ph.D., is further
4 subject to disciplinary action for unprofessional conduct in
5 violation of Code section 2960(j) in that he was grossly
6 negligent in his care and treatment of the patient, as more
7 particularly set forth in paragraphs 9A through and including
8 9G above, which are realleged herein as if fully set forth.

9 13. Respondent Stephen Woody Brown, Ph.D., is further
10 subject to disciplinary action for unprofessional conduct in
11 violation of Code section 2960 in that he engaged in general
12 unprofessional conduct, as more particularly set forth in
13 paragraphs 9A through 9G above, which are realleged herein as
14 if fully set forth.

15 **PRAYER**

16 **WHEREFORE**, the complainant requests that a hearing be
17 held on the matters herein alleged, and that following the
18 hearing, the Board issue a decision:

19 1. Revoking or suspending Psychologist's License No.
20 PSY 3412, heretofore issued to respondent Stephen Woody Brown,
21 Ph.D.;

22 2. Ordering respondent to pay the Board the actual
23 and reasonable costs of the investigation and enforcement of this
24 case;

25 3. Ordering respondent to pay the Board the monetary
26 costs associated with the monitoring of probation; and

27 ///

1 4. Taking such other and further action as the Board
2 deems necessary and proper.

3 DATED: July 3, 1997
4

5
6 Thomas S. O'Connor
7 Thomas S. O'Connor
8 Executive Officer
9 Board of Psychology
 Department of Consumer Affairs
 State of California

 Complainant

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DECLARATION OF SERVICE BY CERTIFIED MAIL

In the Matter of the Accusation
Against:

Stephen Woody Brown, Ph.D.

No. : W111

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause; my business address is 1422 Howe Avenue, Sacramento, California 95825. I served a true copy of the attached:

STATEMENT TO RESPONDENT; ACCUSATION; GOVERNMENT CODE SECTIONS 11507.5, 11507.6 AND 11507.7; NOTICE OF DEFENSE (2 COPIES); REQUEST FOR DISCOVERY AND DISCIPLINARY GUIDELINES

by mail on each of the following, by placing same in an envelope (or envelopes) addressed (respectively) as follows:

NAME AND ADDRESS

CERT NO.

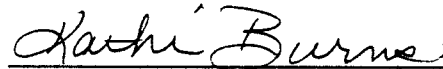
Stephen Woody Brown
20331 Bancroft Circle
Huntington Beach, CA 92646

P 361 662 012

Richard Hendlin
Deputy Attorney General
110 West A Street, Ste. 1100
San Diego, CA 92186

Each said envelope was then, on July 3, 1997, sealed and deposited in the United States mail at Sacramento, California, the county in which I am employed, as certified mail, with the postage thereon fully prepaid, and return receipt requested.

Executed on, July 3, 1997, at Sacramento, California.
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



DECLARANT
Kathi Burns
Enforcement Technician